

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

YASKAWA AMERICA, INC.
MOTMAN ROBOTICS DIVISION,

Case No.: 3:14-cv-84

Plaintiff,

vs.

INTELLIGENT MACHINE
SOLUTIONS, INC.,

District Judge Thomas M. Rose
Magistrate Judge Michael J. Newman

Defendant.

ORDER

On Friday, July 17, 2015, Plaintiff's counsel deposed Tom Joy, a non-party in this case, in Michigan. Plaintiff's counsel issued a subpoena to secure Mr. Joy's attendance at the deposition. Defense counsel did not subpoena Mr. Joy, but attended the deposition in Michigan and sought to cross-examine Mr. Joy following examination by Plaintiff's counsel. However, Plaintiff's examination took seven hours, *i.e.*, the maximum time allowable under Rule 30(d)(1) in the absence of leave. Mr. Joy declined to stay to allow for cross-examination by Defense counsel.

In addition, documents produced to Defendant pursuant to a *subpoena duces tecum* reveal certain communications between Mr. Joy and Plaintiff's expert witness, who is being deposed tomorrow on July 28, 2015. Defendant believes that Plaintiff's expert may have developed new opinions based upon those communications, and anticipates needing to consult with Defendant's experts should any new opinions be revealed at deposition. To accommodate Mr. Joy's continued deposition, and to further consult with experts, Defense counsel requests a 30-day

extension of the discovery period -- which is presently set to expire on August 1, 2015. Defense counsel advised the Court that, if granted leave, he anticipates deposing Mr. Joy by telephone.

The Court finds that Defendant should be permitted an opportunity to cross-examine Mr. Joy during a telephone deposition. *See Fed. R. Civ. P. 30(d)(1)* (stating that “[t]he court must allow additional time . . . if need to fairly examine the deponent”). The Court is also sensitive to the fact that the calendar has previously been amended and counsel for both sides have been granted additional time in which to conduct discovery. The Court also finds Defendant’s concern -- regarding the need to further consult with its experts -- to be premature. Accordingly, the Court **DENIES** the requested 30-day extension, but **GRANTS** additional time -- up to two (2) hours (to include cross-examination and redirect, if any) -- for a continued deposition of Mr. Joy by telephone. Although a non-party to this litigation, the Court expects Mr. Joy to make himself available for said deposition before the conclusion of the current discovery deadline on August 1, 2015.

IT IS SO ORDERED.

Date: July 27, 2015

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge